writing with any writing proved to the satisfaction of the court to be the genuine handwritlng of any person, claimed on the trial to have made or executed the disputed instrument, or writing, shall be permitted and submitted to the court and jury in like manner". The court is united on the point that, since the passing of this statute, any writing proved "to the satisfaction of the court to be genuine," either by common law rules or by the concession or admission of the defendant, may be used in evidence, although not relevant for other purposes. But this is limited by the qualification, "that writings which are otherwise incompetent should never be received in evidence for purposes of comparison" (per WERNER, J., p. 307). From this statement it may be inferred that the "Barnet Letters" can not, at a new trial, be used as standards of comparison, but are incompetent as tending to prove the defendant guilty of another crime.

TAXATION OF CORPORATE FRANCHISES.—The recent case of *State Board of Equalization* v. *People* (Ill. Oct. 1901) 61 N. E. 339, illustrates two methods of assessing corporate franchises for purposes of taxation. The Board of Equalization, having power to assess corporate franchises according to such rules as it might adopt, in 1873 adopted as a basis of assessment the sum of the market value of the shares of capital stock and the market value of the funded debt, less the assessed value of all tangible property. This rule, with unimportant changes, remained in force for a number of years, when the Board eliminated from the basis of assessment the amount of the funded debt. A petition for a writ of *mandamus* was granted, to compel the Board to include in its assessment the amount of the funded debt, the Court holding that though it might have no power to review an assessment of the Board, yet, when property had been assessed at so low a rate as to amount to no assessment at all, it could compel an assessment which would conform to law.

It seems clear that when the value of the capital stock is part of the basis of assessment the value of the tangible property should be deducted, for, although capital stock and total property are not interchangeable terms, corporate property contributes to the value of the capital stock, and to this extent the taxation of corporate property and capital stock involves double taxation. In Pennsylvania, however, it is not so regarded. *Pittsburg Ry. Co.* v. *State* (1870) 66 Pa. St. 77. There is no uniformity in the decisions upon this point. Several States—Alabama, Illinois, Indiana, Vermont, Maryland and (for certain purposes) New York—have recognized the principle above stated in their statutes.

Few of the methods employed in the various States for assessing corporate franchises seem so objectionable as that adopted by the Illinois Board, which eliminates the funded debt. By this method, heavily bonded corporations would, to a great extent, escape taxation, because the capital stock alone would not represent the value of the property. Undoubtedly in all cases an attempt is made to measure the earning capacity of the corporation, but there is no

necessary connection between the value of capital stock and earning capacity, so that even in cases of corporations without bonded debt there is no justice in this method. Such a basis of assessment, however, is upheld by the courts of California. *Spring Valley W. W.* v. *Schottler* (1882) 62 Cal. 69, 117. The reason for adding to the value of the shares of stock the value of the funded debt is that this indebtedness makes the stock worth just so much less. Taking the sum of the two is more just than the other method, since then heavily bonded corporations cannot escape. The argument is concisely stated in *State Railway Tax Cases* (1875) 92 U. S. 575, 605: "These mortgages are, however, liens on the road, and, taking precedence of the shares of the stockholder, may or may not extinguish the value of his shares. They must in any event affect that value to the exact amount of the aggregate debts. For all that goes to pay that debt and its interest diminishes *pro tanto* the dividend of the shareholder and the value of his share." It has been objected that when the tax is on bonds as well as on stock it will be inadequate, because applicable only to the bonds owned by residents of the State. But in Illinois this had been avoided by levying the tax not on stock and bonds, but on a valuation equal to the stock plus the bonds. The principal objection to this method is that corporations frequently pay no dividends and yet their stock has some speculative value; and in those cases the tax does not necessarily bear any relation to the earning capacity, for fluctuating, speculative values have no connection with the productiveness of corporate property. While this method, therefore, is superior to that in which the debt is not an element of assessment, all the objections to the latter are not obviated.

WHERE AN AGENT COMMITS FRAUD AND ONE OF TWO INNOCENT PERSONS MUST SUFFER.—Few *dicta* have been the cause of more unsatisfactory decisions than the *dictum* of ASHURST, J., in *Lickbarrow* v. *Mason* (1787) 2 T. R. 63, 70, that "whenever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it." Like a Delphic response it is often employed by opposing parties in the same contest, each maintaining that it was the other who ill-advisedly confided in him who proved a rogue, and therefore should be the sufferer. *Mussey* v. *Beecher* (1849) 3 Cush. 511. That it should be so used is natural: it but expresses a result that appeals to one as desirable, not a definite principle of law upon which one may predicate rights and liabilities. Mr. Bigelow's assertion that the statement "started when judges were feeling after the law, 'if haply they might find it,' is a dangerous one, so much so that the danger fairly overbalances its usefulness," Law of Bills, Notes and Cheques, 2ed. 204–205, is well illustrated by the recent decision of the English Court of Appeal in *Farquharson Brothers & Co.* v. *King & Co.* [1901] 2 K. B. 697.